

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ABIR MULLICK

Appeal No. 97-1952
Application 08/289,068¹

ON BRIEF

Before FRANKFORT, STAAB and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 25 and 34 through 38. Claims 26 through 33 have been indicated by the examiner to contain allowable subject matter, but currently stand objected to

¹Application for patent filed August 11, 1994.

Appeal No. 97-1952
Application 08/289,068

until they are rewritten in independent form.

Appellant's invention is directed to a modular bathing unit comprised of a frame having a plurality of receptacles for receiving removable and interchangeable modular bathing equipment panels. Looking for example at Figure 1, the frame therein includes a plurality of receptacles (e.g., 47, 48, 49) which receive modular bathing equipment panels (52a, 52b, 52c, etc.). As noted in the paragraph bridging pages 11-12 of the specifica-tion, the removable and interchangeable modular bathing equipment panels

may contain therein or have mounted thereon various equipment for use in bathing including controls, displays, shower heads, water faucets, storage racks, towel racks, heaters, ventilation means, and lights. There further may be provided "decorative panels" which have as their only "equipment" a flat, finished outer surface. Preferably comprised of molded fiberglass or acryilic [sic], the panels may be of any texture, color, or pattern.

Independent claim 1 and claims 5, 10, 12, 14 and 15 are representative of the subject matter on appeal and a copy of those claims is attached to this decision.

The prior art references of record relied upon by the

Appeal No. 97-1952
Application 08/289,068

examiner in rejecting the appealed claims are:

Turner 1963	3,078,475	Feb. 26,
McMurtrie et al. (McMurtrie) 25, 1966	3,230,549	Jan.
Leichle et al. (Leichle) 07, 1989	4,802,247	Feb.
Lavoine et al. (Lavoine) 21, 1989	4,881,281	Nov.
Smith 1991	4,987,619	Jan. 29,
Chiaramonte et al. (Chiaramonte) (European Application)	EP 088,736	Sep. 14, 1983
Hettmer ² 1986 (Germany)	3,511,267	Oct. 09,

Claims 1, 2, 5, 6, 10, 11 and 13 stand rejected under 35
U.S.C. § 102(b) as being anticipated by McMurtrie.

Claims 3, 4, 7 through 9, 12, 14 and 35 through 37 stand
rejected under 35 U.S.C. § 103 as being unpatentable over
McMurtrie in view of Chiaramonte.

Claims 15 through 24 stand rejected under 35 U.S.C. §

²A copy of the translations of Hettmer and Chiaramonte obtained by the
PTO is attached to this decision.

Appeal No. 97-1952
Application 08/289,068

103 as being unpatentable over McMurtrie in view of Chiaramonte as applied to claim 14 above, and further in view of Leichle and Smith.

Claim 25 stands rejected under 35 U.S.C. § 103 as being unpatentable over McMurtrie in view of Chiaramonte as applied to claim 14 above, and further in view of Smith and Lavoine.

Claim 34 stands rejected under 35 U.S.C. § 103 as being unpatentable over McMurtrie, Chiaramonte, Leichle and Smith as applied to claim 20 above, and further in view of Hettmer.

Claim 38 stands rejected under 35 U.S.C. § 103 as being unpatentable over McMurtrie, Chiaramonte, Leichle and Smith as applied to claim 15 above, and further in view of Turner.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 18, mailed October 4, 1996) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper

Appeal No. 97-1952
Application 08/289,068

No. 16, filed June 21, 1996) and reply brief (Paper No. 19, filed December 10, 1996) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions

articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Turning first to the examiner's rejection of claims 1, 2, 5, 6, 10, 11 and 13 under 35 U.S.C. § 102(b) as being anticipated by McMurtrie, we note that McMurtrie discloses a bathing unit which includes a modular frame construction (as generally set forth in independent claims 1 and 5 on appeal) for housing and/or supporting components, such as plumbing fixtures, heating and cooling units, and cabinets in a

bathroom. As may be seen in Figures 1, 4, 5 and 6 of
McMurtrie, the frame has a plurality of receptacles (e.g., 36,
40; 38, 42; 12d, 48; 46, 50; 70, 74 and 72, 76) for receiving
a plurality of removable and interchangeable modular bathing
equipment panels or units, such as the bathtub unit assembly
(22) and the lavatory/water closet unit assembly (24) which
are removably attached to said frame (see particularly, Fig.
6). With regard to claims 2 and 6 on appeal, we observe that
McMurtrie shows water line means in Figure 5 mounted on the
frame for providing water to locations on said frame easily
accessed by said equipment panels/units (22, 24). McMurtrie
also shows intersecting frame members/lattice members in the
walls of

the modular frame defining the receptacles therein, as broadly
set forth in claims 10 and 11 on appeal.

Appellant's arguments on pages 5-6 of the brief that
McMurtrie does not show or disclose a plurality of receptacles
"which accommodate more than one type of modular panel in a

Appeal No. 97-1952
Application 08/289,068

removable and interchangeable fashion" and does not teach or suggest panels/units which are "designed to be interchangeable with each other," are not persuasive because the broad language of independent claims 1 and 5 on appeal do not recite or require such features. Moreover, we note the disclosure in McMurtrie (col. 2, lines 7-10) that the frame therein is "readily adapt-able for use with different fixture arrangements," (col. 6, lines 49-55) that the frame structure is "adapted to various design arrange-ments... functions, and exteriors from their presently illus-trated position," and (col. 7, lines 8-11) that the frame is designed "to provide versatility to meet changing conditions as technology in the art advances" and is also designed "to provide versatility to meet individual present day requirements."

What McMurtrie does not show or disclose is a grab bar panel, as in claim 13 on appeal, which is installed in one of the

receptacles, and wherein said grab bar panel is one of said removable and interchangeable modular bathing equipment

panels. As argued by appellant on page 6 of the brief, the paneling (89) of McMurtrie seen in Figure 8 as carrying a grab bar (unnumbered) is not disclosed as being modular, removable, or interchangeable and is not itself disclosed as being comprised of any such modular, removable, or interchangeable panels.³

Based on the foregoing, we conclude that McMurtrie does anticipate the subject matter of appellant's claims 1, 2, 5, 6, 10 and 11 on appeal, but not the subject matter of claim 13 on appeal. It follows that the examiner's rejection of claims 1, 2, 5, 6, 10 and 11 under 35 U.S.C. § 102(b) will be sustained, while the rejection of claim 13 under 35 U.S.C. § 102(b) will not.

We next look to the examiner's rejection of claims 3, 4, 7 through 9, 12, 14 and 35 through 37 under 35 U.S.C. § 103 as being unpatentable over McMurtrie in view of Chiaramonte.

³However, we direct the examiner's and appellant's attention to the applied Smith patent (4,987,619) Figure 10, wherein a modular, removable grab bar panel (18b) is shown associated with a bathing unit, and suggest that it may well have been obvious to one of ordinary skill in the art to form the paneling (89) of McMurtrie in the manner taught in Smith to thereby obtain the advantages disclosed in Smith (col. 1, lines 38-43).

Appeal No. 97-1952
Application 08/289,068

These

claims relate to electrical line means mounted on the frame for providing power to locations on the frame, water line means mounted on the frame, control line means on the frame for transporting control signals to and from said equipment panels, and a conduit for housing said electrical, water and control line means. Given a collective evaluation of the teachings found in McMurtrie (col. 7, lines 30-34) concerning the frame being adapted to "support, receive or house all of the fixtures and associated components such as piping ... lighting fixtures, heating and cooling units, and electrical components such as wiring and switches," and in Chiaramonte regarding electrical, water and control line means for a bathroom facility being housed in conduits (e.g., 2, 3, 4, 5, 6 and 22), we must agree with the examiner that the subject matter of claims 3, 4, 7 through 9, 12, 14 and 35 through 37 on appeal would have been obvious to one of ordinary skill in the art at the time of appellant's invention. Accordingly, the examiner's rejection of claims 3, 4, 7 through 9, 12, 14 and 35 through 37 under 35 U.S.C. § 103 as being unpatentable over

Appeal No. 97-1952
Application 08/289,068

McMurtrie in view of Chiaramonte is sustained.

Regarding the examiner's rejections of claims 15 through 24, 25, 34 and 38 under 35 U.S.C. § 103, we note that claims 15, 20

and 25, from which all the remaining claims are dependent, set forth a bathtub in the tub region of the frame and specify that the bathtub "comprises a plurality of said removable and inter-changeable modular bathing equipment panels." Like appellant (brief, page 10 and reply brief, page 4), we note that neither Leichle nor any of the other prior art references relied upon by the examiner shows, discloses, or teaches a bathtub which is comprised of "a plurality of said removable and interchangeable modular bathing equipment panels." Accordingly, the examiner's respective rejections of claims 15 through 24, 25, 34 and 38 under 35 U.S.C. § 103 will not be sustained.

In summary: the decision of the examiner rejecting claims 1, 2, 5, 6, 10, 11 and 13 under 35 U.S.C. § 102(b) as being anticipated by McMurtrie, has been affirmed as to claims 1, 2,

Appeal No. 97-1952
Application 08/289,068

5, 6, 10 and 11, but reversed with regard to claim 13. The examiner's decision rejecting claims 3, 4, 7 through 9, 12, 14 and 35 through 37 under 35 U.S.C. § 103 as being unpatentable over McMurtrie in view of Chiaramonte has been affirmed. However, the examiner's decision rejecting claims 15 through 24, 25, 34 and 38 under 35 U.S.C. § 103 based on McMurtrie in view of

Chiaramonte and various combinations of Leichle, Smith, Lavoine, Hettmer and Turner, has been reversed. Thus, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

CHARLES E. FRANKFORT)
Administrative Patent Judge)
)

Appeal No. 97-1952
Application 08/289,068

)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

vsh

Appeal No. 97-1952
Application 08/289,068

George S. Blasiak
518 Capen Hall
University AT Buffalo
Buffalo, NY 14260